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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 936

WILLIAM DAVIES CO., INC.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL., JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR REHEARING

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To the Honorable the Judges of said Court:

Your petitioner, William Davies Co., Inc., respectfully shows unto the Court that on the 9th day of May, A. D. 1941, it delivered to Railway Express Agency at Chicago, Illinois, for transportation to the Clerk of this Court, a reply brief, in which it is firmly believed that numerous errors were pointed out in respondent's brief, and petitioner was seriously disappointed to hear from the Clerk of this Court that said reply brief was not received until after this Court announced a ruling upon the petition herein, denying said petition, which ruling

petitioner verily believes would not have happened if the matters in said reply brief had reached the attention of this Court.

Wherefore petitioner prays a rehearing herein to the end that this Court may reconsider and take note of the following:

1. This Court must have been impressed and misled by what appears at page 2 of respondent's brief where, in speaking of the Supreme Court opinion under review, that brief says:

> "That Court held that the statutes under consideration did not come within the purview of section 34 of article 4 of the Illinois Constitution, and consequently no referendum was required in order to make them effective."

That in making said statement, counsel for respondent makes no reference to any language in said opinion purporting to bear out said statement; that said statement is entirely erroneous as is evidenced by the opinion referred to, which appears at pages 11 to 15, inclusive, of the Transcript of the Record, and to which petitioner respectfully invites the attention of this Court.

That while by way of discussion the opinion refers to numerous matters, the holding of the Court is embodied in next to the last paragraph of the opinion occurring at page 15 of the Transcript, where the Court states its conclusion as follows:

> "We hold that the amendment to the Constitution, section 34 of article 4, is not a bar to the challenged statutes, and that the General Assembly was empowered to enact them unless restrained by other provisions of the Constitution."

That the statement and the opinion as a whole is evasive, arbitrary and capricious, because it evades a clean-cut decision of the three questions repeatedly

pressed upon the attention of that Court for decision, thereby rendering said questions federal, as distinguished from state questions. Those three questions, none of which are decided by the state court in its opinion before this Court, are:

(1) The several acts in question, regarded as valid legislative enactments, are laws pertaining to local municipal government and as such must be approved by the legal voters of Chicago before they take effect in Chicago, as required by section 34 of article 4.

(2) The four levies in question are without authority of law and by reason thereof are without due process of law and consequently violate the Fourteenth Amendment to the Federal Constitution and are void.

(3) The classification embodied in the so-called pegged levy act is not based upon a reasonable ground which bears a just and proper relation to the attempted classification, but is a mere arbitrary selection, and hence violates the Fourteenth Amendment to the Federal Constitution.

That the language of said section 34 of article 4, in part, is:

> "No law based upon this amendment to the Constitution affecting the municipal government of the city of Chicago shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special;"

That the language last aforesaid was construed by the Supreme Court of Illinois in *People* v. *City,* 310 Ill. 534, at page 540, where it is said:

> "The intention of the amendment is manifestly that the powers conferred by it on the General Assembly shall be exercised subject to the right of the people to reject the result. The General Assem-

> bly has not the final power, but its legislation, so far as is based upon this amendment, is subject to a veto by an adverse popular vote."

That none of said laws were submitted to or approved by a popular vote.

2. That the law of Illinois since the decision in *City* v. *Reeves,* 220 Ill. 274, has been that laws pertaining to the levy of taxes for local municipal government are within the purview of section 34 of article 4 as stated in the opinion last aforesaid, at page 302, as follows:

> "It would seem equally clear that the obtaining of revenue with which to pay the indebtedness of the city and with which to maintain a local municipal government in the city of Chicago was germane to the organization of such municipal government, as local municipal government in said city could not exist without revenue with which to pay its existing indebtedness and to maintain in the city local municipal government."

3. That in speaking of the constitutional force in the City of Chicago of the four acts in question, respondent's brief next says:

> "This question is purely one of local law and presents no federal question."

That this statement is clearly erroneous. That while the necessity for a submission to a referendum of the four acts in question present primarily a state question, the State Court, although urged so to do, did not rule upon it in this case, but did rule upon it in *People* v. *City,* 310 Ill. 534, aforesaid, which is cited approvingly in the State Court Opinion, Transcript, page 13, and it is also a federal question because said four laws being without effect in the City of Chicago, for want of an approving popular vote, renders the four levies, which purport to be based upon them, without due process of law in violation of the Federal Constitution.

4. That apparently this Court did not take note that the so-called pegged levy act assumes to make a classification abhorrent to the Fourteenth Amendment of the Federal Constitution, and hence that the determination of the validity thereof is one primarily for the consideration of this Court. The act assumes to grant to a municipality of 150,000 or more population, authority to make a lump sum levy of $37,000,000.00.

As appears from the record, there is no municipality, aside from Chicago, having a population of over 105,000 inhabitants, whereas Chicago has 3,390,000 inhabitants. Chicago levied a tax at the rate of 1.784012 per cent on an assessed valuation of $2,078,000,000.00.

If there were a municipality of 150,000, upon the basis of the population of Chicago, it would have an assessed valuation of approximately $94,000,000.00, and if the Chicago rate required to produce the $37,000,000.00 were applied to such assessed valuation, it would produce approximately $1,770,000.00. On the other hand, it would require a rate of a little over 39 per cent applied to the $94,000,000.00 assessed valuation to produce the $37,000,000.00 in taxes.

Your Honors must have failed to note that a municipality of 150,000 population has no need for $37,000,000.00 in annual taxes; that there is no real relationship in the case of a city of 150,000 and an assessed valuation of approximately $94,000,000.00 and $37,000,000.00 in taxes. Conversely, the real tax levy need of such 150,000 municipality is approximately $1,770,000.00.

Wherefore, petitioner suggests that if the Court will analyze the figures you will unhesitatingly conclude that the proposed classification is in flagrant violation of the Fourteenth Amendment to the Federal Constitution, under the rules laid down by this Court in decisions, some of which are cited in petitioner's brief beginning at page 26 and extending to and including page 32.

5. That the State Supreme Court evaded passing upon the federal questions thereby imposing upon this Court the duty to decide said federal questions. As this Court has held in *Lawrence* v. *State Tax Commission of Mississippi,* 286 U. S. 276, where this Court said:

> "If the Constitution exacts a uniform application of this tax on appellant and his competitors, his constitutional rights are denied as well by the refusal of the State Court to decide the question as by the erroneous decision of it. * * * We therefore conclude that the purported non-federal ground put forth by the State Court for its refusal to decide the federal question was unsubstantial and illusory, and that the appellant may invoke the jurisdiction of this court to decide the question. * * * Petitioner's constitutional rights are denied as well by the refusal of the State Court to decide the question as by the erroneous decision of it."

6. That this Court may have been erroneously impressed by respondent's Point II, wherein the contention was made that the federal question was not presented to the State Supreme Court. When we refer, however, to pages 2, 3 and 4 of the Transcript of the Record, we note that the federal question was raised as to each and all of the four levies. It is again raised in the errors relied upon, which are a part of the brief filed in the Supreme Court, as those errors appear at page 5 of said brief.

(Petitioner sent along with this reply brief a motion for leave to file a certified copy of the Supreme Court brief, but that it, as well as the reply briefs, arrived after this Court had made its ruling on the petition, and if this petition is granted, petitioner will renew its motion.)

That petitioner has gone much beyond what this Court held to be necessary in *Chicago, Burlington & Quincy Railroad Company* v. *City of Chicago,* 166 U. S. 226,

where it seemed that the only manner in which the federal constitutional question was raised was in a motion for a new trial where, among the grounds relied upon, were certain matters alleged to constitute a violation of the Fourteenth Amendment to the Federal Constitution requiring due process of law.

This Court, in passing upon the sufficiency of that manner of raising the question, at page 231, said:

> "When the trial court overruled the motion for a new trial and entered judgment, it necessarily held adversely to these claims of federal right. But this is not all. In the assignment of errors filed by the defendant in the Supreme Court of Illinois these claims of right under the Constitution of the United States were distinctly reasserted. * * * The fact that the Supreme Court of Illinois did not in its opinion refer to the Constitution of the United States, is not conclusive against the jurisdiction of this court to reexamine the final judgment of the State Court."

In *Kaukauna* v. *Green Bay, etc.,* 142 U. S. 254, this Court, at page 269, went still further and held that if the federal questions appear affirmatively in the record and if an adjudication of the question were necessarily involved in the disposition of the case by the State Court, this Court would take jurisdiction.

The basis of the argument that the levies in question violated the Fourteenth Amendment to the Federal Constitution are predicated upon Points I, II, III, IV, V and VII, and upon the arguments made under those Points, because if those Points are well taken, there is no law upon which to base the levies, thereby rendering them without due process and hence in violation of the Fourteenth Amendment, and this contention is made at page 23 of the brief, where section 1 of article 14 of the Federal Constitution is cited.

As appears from the petition for rehearing filed in the State Court, and which appears in the Transcript of the Record herein, at page 13, it was prayed that the Court modify its opinion to hold,

> "5. That the four acts in question and each of them do not constitute due process of law and are in violation of the Fourteenth Amendment to the Federal Constitution and have no effect in the City of Chicago and that the judgment appealed from, in so far as founded upon said acts, is also lacking in due process of law and is in violation of said Amendment."

7. That when petitioner argued that the laws in question are in violation of the State Constitution and void, it is thereby argued that there is no due process of law upon which to predicate the four levies. It follows that said levies and each of them are without due process of law in violation of the Fourteenth Amendment.

Petitioner therefore prays that this Court grant unto it a rehearing herein, to the end that Your Honors may consider any of the matters herein which the Court may have inadvertently overlooked, and that this Court may accord to your petitioner the protection afforded by the Fourteenth Amendment to the Federal Constitution, without which protection petitioner will be most grievously wronged.

And your petitioner will ever pray.

WILLIAM DAVIES CO., INC.,

By Charles McDaff

Its Attorney.